

24. TERMS AND CONDITIONS

24.1 Standard Conditions and Instructions to Bidders

Standard Idaho Terms and Conditions are used for all purchases and contracts whether solicited by an Invitation To Bid or Request For Proposal. The most current information is available on the Idaho Purchasing home page. [Click here to access](#). Additional Special Terms and Conditions are included with the ITB or RFP as necessary.

24.2 Standard Contract Terms and Conditions

1. **TERMINATION:** The State may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Contractor has been provided written notice of default or noncompliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days, after receipt of such notice. If the Agreement is terminated for default or non-compliance, the Contractor will be responsible for any direct costs and/or damages incurred by the State for placement of a new contract. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary.

2. **RENEWAL OPTIONS:** Upon mutual agreement by both parties (unless otherwise modified by a special contract term, condition, or specification), the Agreement may be extended under the same terms and conditions of this Agreement for one (1) year intervals or the time interval equal to the original contract period.

3. **PRICES:** Prices shall not fluctuate for the period of the Agreement, unless otherwise specified by the State in the bidding documents or other terms of the Agreement. Product prices shall remain valid for the time of the original order date, including change orders that may extend delivery beyond the original delivery date. Prices include all costs normally associated with shipping and delivery to the F.O.B. destination address.

4. **CHANGES/MODIFICATIONS:** Changes of specifications or modification of this Agreement in any particular can be effected only upon written consent of the Administrator, Division of Purchasing, but not until any proposed change or modification has been submitted to him in writing, signed by the party proposing the said change.

5. **CONFORMING GOODS AND/OR SERVICES:** The goods and/or services shall minimally conform in all respects with the specifications as indicated in the State's bid solicitation documents. In event of nonconformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods and/or services.

6. **OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Idaho be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

7. **CONTRACT RELATIONSHIP:** It is distinctly and particularly understood and agreed between the parties hereto that the State of Idaho is in no way associated or otherwise connected with the performance of any service under this Agreement on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor.

Said Contractor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of this Agreement, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, indemnify and hold the State of Idaho harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under this Agreement. The Contractor will maintain any applicable workman's compensation insurance and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certification of workman's compensation insurance may, at the State's option, result in cancellation of this Agreement or in a contract price adjustment to cover the State's cost of providing any necessary workman's compensation insurance. The State does not assume liability as an employer.

8. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

9. TAXES: The State of Idaho is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service. Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. If, after the effective date of this Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time this Contract becomes effective, the State of Idaho will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State of Idaho be responsible for personal property taxes affecting items subject to this Contract at the time it becomes effective.

10. SAVE HARMLESS: Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under this Agreement that cause death or injury or damage to property or arising out of a failure to comply with any state or federal statute, law, regulation or act. IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. Contractor shall have no indemnification liability under this section for death, injury, or damage arising out of

the negligence or misconduct of the State.

11. ORDER NUMBERS: Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

12. CONTRACTOR RESPONSIBILITY: The Contractor shall be required to assume responsibility for production and delivery of all material and services offered in its bid or proposal, whether or not the Contractor is the manufacturer or producer of such material or services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.

13. SUBCONTRACTING: Unless otherwise allowed by the State in the Request for Proposal, the Contractor shall not, without written approval from the Administrator, Division of Purchasing, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or nonperformance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

14. STATE OF IDAHO MINIMUM WAGE LAW: It will be the responsibility of the Contractor to fully comply with the State of Idaho code regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.

15. COMMODITY STATUS: It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the bidding or specification documents. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State of Idaho as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. Unless modified by other specifications in the bidding documents, the warranty is to include replacement, repair, and any labor for the period of time stated by the Contractor in the bid response or the period of time required by other specifications, whichever is longer.

16. SHIPPING, DELIVERY, INSTALLATION AND ACCEPTANCE: All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. "F.O.B. Destination", unless otherwise specified in the Agreement or bid solicitation documents, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point, unless a different location is specified by the State in the bid solicitation documents. The Contractor shall deliver all orders as specified and complete installation, if required, within the number of days after receipt of order (A.R.O.) offered, unless otherwise specified in the bid documents. Time for delivery commences at the time the order is received by the Contractor. When the purchase price does not include delivery, acceptance shall occur fourteen (14) days after delivery, unless the State has notified the Contractor in writing that the order does not meet the State's bidding document requirements or otherwise fails to pass

the Contractor's established test procedures or programs. When installation is included, acceptance shall occur upon completion of installation. If an order is for support or other services, acceptance shall occur fourteen (14) days after completion, unless the State has notified the Contractor in writing that the order does not meet the State's bidding document requirements or otherwise fails to pass the Contractor's established test procedures or programs.

17. RISK OF LOSS: Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement. If installation is requested by the State or specified in the State's bidding documents, pricing shall include all charges associated with a complete installation at the location specified.

18. INVOICING: ALL INVOICES are to be sent directly to the ORDERING DEPARTMENT ONLY. Agreement number and/or purchase order numbers are to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.

19. ASSIGNMENTS: No contract or order or any interest therein shall be transferred by the Contractor to whom such contract or order is given to any other party, without the approval in writing of the Administrator, Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State.

20. PROHIBITED CONTRACTS: No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Idaho, if made by, through or on behalf of the department in which he is an officer or employee or if made by, through or on behalf of any other department unless the same are made after competitive bids. Idaho Code Section 67-5726(1).

21. PAYMENT PROCESSING: Idaho Code Section 67-5735 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."

22. GOVERNMENT REGULATIONS: Contractor guarantees that all items meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

23. HOT GOODS: The Contractor hereby certifies that all goods provided under this Agreement are produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulation and orders of the United States Department of Labor issued under Section 14 thereof and other applicable provisions of the Fair Labor Standards Act.

24. YEAR 2000 WARRANTY: The Contractor warrants that each hardware, software, and firmware product (or item containing a hardware, software, and firmware component) delivered under this Agreement shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth

and twenty-first centuries, including leap year calculations, without manual intervention, when used in accordance with the product documentation provided by the Contractor. If the Agreement requires that hardware, software and firmware products must perform as a system, then this warranty shall apply to those products as a system. This warranty shall be subject to the general warranty provisions of this Agreement, provided that notwithstanding any provision to the contrary, the remedies available to the State under this warranty shall include immediate repair or replacement of any product (i) whose non-compliance is discovered and made known to the Contractor in writing within ninety (90) days after acceptance; or (ii) whose non-compliance is not reasonably detectable by the State in the normal course and that does fail to accurately process date data as set forth above from, into or between the twentieth and twenty-first centuries. The repair or replacement required by the previous provision shall be without interruption to the ongoing business of the State and it is hereby agreed that time is of the essence. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

25. PATENTS AND COPYRIGHT INDEMNITY

a) Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for items purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

b) Contractor shall have no liability to the State under any provision of this clause with respect to: any claim of infringement that is based upon (i) the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications; (ii) the modification by the State of the item(s); or (iii) the use of the item(s) not in accordance with Contractor's previously established specifications.

c) Should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the item(s), to replace or modify the item(s) so that it becomes noninfringing, or to grant the State a full refund for the purchase price of the item(s) and accept its return.

26. CONFIDENTIAL INFORMATION: Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or

information that:

- a) Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b) Becomes generally available to the public other than as a result of disclosure by Contractor; or
- c) Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

27. **USE OF THE STATE OF IDAHO NAME:** Contractor agrees that it will not, prior to, in the course of performance of this Agreement (or any order), or thereafter use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.

28. **APPROPRIATION BY LEGISLATURE REQUIRED:** It is understood and agreed that the State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations and, in some instances, direct federal funding.

29. **SPECIAL TERMS GOVERN:** In the event of any conflict between these standard terms and conditions and any special terms and conditions that are otherwise included in the bid solicitation, the special terms and conditions will govern.

30. **FORCE MAJEURE:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the Administrator, Division of Purchasing promptly in writing of any cause for delay and the Administrator, Division of Purchasing concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

31. **GOVERNING LAW AND SEVERABILITY:** This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the Agreement shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this Agreement shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.

32. ENTIRE AGREEMENT: This Agreement, with the State's Invitation to Bid or Request for Proposal, including any addenda (such deemed incorporated by reference) and the bid response, to the extent it is not in conflict with the bid specifications (such document deemed incorporated by reference), constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids or proposals, both oral and written, discussions, representations, commitments, and all other communications between the parties. Where terms and conditions specified in the State's bid documents or the Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Agreement shall prevail notwithstanding any variances with the terms and conditions of any other order submitted by the State of Idaho.

24.3 Special T&Cs for Request for Proposals

MULTIPLE PROPOSALS: Unless otherwise prohibited in other bidding documents, a vendor may submit more than one proposal. At least one of the proposals must be complete and comply with all instructions of this Request for Proposals. However, the additional proposals may be in an abbreviated form following the same format, but providing only information different in detail from that contained in the complete proposal.

SPECIFICATIONS: In order to be considered for evaluation, proposals submitted in response to this Request for Proposal must conform to all stated specifications. If a proposal substantially conforms to all specifications, though not strictly responsive, it may be accepted if the variance or minor deviation is inconsequential. A variance will be considered inconsequential if it cannot have affected the amount of the bid and cannot have given the bidder an advantage or benefit not allowed other bidders. A variance will be considered major when such variance or deviation frustrates the competitive bidding process. The Administrator for the Division of Purchasing shall have the right to reject any and all bids when the Administrator determines that the bid deviates to a major degree from the bid specifications.

BEST AND FINAL OFFERS: The State may, at its sole option, either accept a bidder's initial proposal by award of a contract or enter into discussions with bidders whose proposals are deemed to be reasonably susceptible of being considered for award. Bidders should submit their best proposals initially as there is no guarantee the State will conduct discussions. During the initial evaluation process, bidders' proposals deemed incapable of meeting the scope and needs of the RFP in a satisfactory manner may be removed from further consideration during any best and final offer phase.

At the public bid opening, only the names of the bidders will be announced and no other information will be made public until after a notice of intent to award is given. During the evaluation phase and any discussions conducted, adequate procedures will be used to ensure that the contents of the bidders' proposals are kept under strict security and disclosure of any information from competing proposals is prohibited.

If discussions are deemed necessary, they may be used to determine in greater detail the bidder's qualifications, explore with the bidder the scope and nature of the project, determine that the bidder will make available the necessary personnel and facilities to perform within the required time, or discuss compensation which is fair and reasonable. The primary purpose of any such discussions will be for clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

The State will schedule a time for the discussions and provide a date and time for receipt of best and final offers. If during discussions there is a need for clarification or change of the RFP it shall be amended to incorporate such clarification or change.

Bidders will be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If the bidder does not submit a notice of withdrawal or a best and final offer, once a date and time has been established for receipt of best and final offers, the bidder's initial or immediate previous offer will be construed as its best and final offer.

SUBCONTRACTING: Unless otherwise allowed by the State in the Request for Proposal, the Contractor shall not, without written approval from the Administrator, Division of Purchasing, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

INSURANCE

a. For the duration of the Agreement and until all work specified in the Agreement is completed, the Contractor shall maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. Within two (2) weeks after notification of award, the apparent successful bidder will provide certificate(s) of the insurance required by the State's bidding documents and/or as specified below. There will not be provisions for exceptions to this requirement. Failure to provide the certificates of insurance within the two (2) week period may, at the State's discretion, result in rejection of the bid and/or cancellation of the Agreement. Work under this Agreement shall not commence until evidence of all required insurance and bonding is provided to the State of Idaho. Evidence of such insurance shall consist of a completed copy of the certificate of insurance signed by the insurance agent for the Contractor and returned to the State. If for any reason, any material change occurs in the coverage during the course of this Agreement, such change will not become effective until 30 days after the State has received written notice of such change. The amount of such insurance shall be not less than:

- (1) Worker's Compensation Insurance in amounts as required by statute.
- (2) Automobile Liability including non-owned and hired \$500,000.00
- (3) Commercial General Liability or Comprehensive General Liability Insurance including Contractual Liability \$500,000.00
- (4) Professional Liability \$500,000.00

b. The certificate must contain a provision that, should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the State, by certified or registered mail, receipt requested.

ACCEPTABLE EMPLOYEES: Contractor shall provide employees experienced in and qualified to perform specified tasks. Unless waived by the State, the Contractor and the State will jointly agree upon those employees who are to perform services under this Agreement. In any event, the State shall be the sole judge of employee performance. If, for any reason, the State deems any contract employee's performance is unsatisfactory, the Contractor shall upon written or verbal request by the State, immediately remove such employee. The Contractor shall replace such employee within twenty four (24) hours of notification unless a different time frame is agreed upon. Failure to provide experienced and qualified employees acceptable to the State may be cause for immediate termination of the Agreement.

24.4 Special T&Cs for Computer Hardware & Software

The State of Idaho, by and through its statutory agent, the Administrator of the Division of Purchasing, within the Department of Administration, (the "State"), on behalf of the State of Idaho Agency named elsewhere in this Agreement (the "State Agency"), subject to the following

terms of this Agreement (the "Agreement"), contracts with the Contractor named elsewhere in this Agreement (the "Contractor"), for the purchase (including installment purchase) or lease of personal property items set forth in the Schedule attached hereto and incorporated in full, hereafter referred to as "Products." These Hardware and Software Terms and Conditions are in addition to the State of Idaho's Standard Contract Terms and Conditions found on the Internet at <http://www2.state.id.us/adm.purchasing>, incorporated into and made part of this bid and any ensuing contract. In the event of any conflict between these Hardware and Software Terms and Conditions and the Standard Terms and Conditions, these Hardware and Software Terms and Conditions shall prevail

1. DEFINITIONS. As used in this Agreement.

A. "Commercial Computer Software" means Computer Software that is used regularly for other than government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices (i.e., that can be considered "shrinkwrap") or Computer Software that does not constitute Special Products and is regularly sold, licensed or leased by the Contractor to governmental entities to meet governmental requirements (i.e., that can be considered "shrinkwrap").

B. "Computer" means a Data processing device capable of accepting Data, performing prescribed operations on the Data, and supplying the results of these operations; for example, a device that operates on discrete Data by performing arithmetic and logic processes on the Data, or a device that operates on analog Data by performing physical processes on the Data.

C. "Computer Data Base" means a collection of Data in a form capable of being processed and operated on a Computer.

D. "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor, or controller that is designed to cause the Computer, processor, or controller to execute an operation or operations. Computer Programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE Maintenance/Diagnostics programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs and the like. Computer Programs may be either machine-dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.

E. "Computer Software" or "Software" means Computer Programs and Computer Data Bases.

F. "Computer Software Documentation" means technical Data, including Computer listings and printouts, in human-readable form that:

- (1) Documents the design or details the Computer Software;
- (2) Explains the capabilities of the Software; or
- (3) Provides operating instructions for using the Software to obtain desired results from a Computer.

G. "Data" means recorded information, regardless of form or method of recording.

H. "Hardware" includes Computers, printers, attached equipment or other equipment utilized for the State's intended purpose.

I. "Products" includes Software, Hardware, equipment, options, documentation,

accessories, supplies, spare parts and upgrades.

J. "Special Products" are Products that have been modified by mutual agreement to meet the State's requested changes.

K. "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates, maintenance and support services, consulting, training and other support services provided by or through Contractor.

2. **SAVE HARMLESS.** Subject to the limits set forth in Sections 7.B.(6) and 7.C of this Agreement, the Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorneys' fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Contractor and its Subcontractors under this Agreement and that cause death or injury or damage to property or that arise out of a failure to comply with any state or federal statute, law, regulation or act.

3. **SOFTWARE LICENSE.** In this section on Software Licenses, the term "Use" means storing, loading, installing, executing or displaying Software on a Computer, processor, or controller, or making a copy of Software for archival or backup purposes only.

A. Contractor grants State a personal, non-transferable and non-exclusive right to use, in object code form, all Software and related documentation furnished to State under this Agreement. This grant shall be limited to use with the Hardware or Products for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by Contractor.

B. State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set out in this Agreement. State also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the Software.

C. State is permitted to make a single archive copy of Software. Any copy must contain the same copyright notice and proprietary markings that are on the original Software.

D. Use of Software on any Products other than that for which it was obtained, removal of Software from the United States, or any other material breach shall automatically terminate this license.

E. The terms and conditions of a standard software license agreement applicable to Commercial Computer Software acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and the Contractor's standard software license agreement, the terms or conditions of this Agreement shall take priority and control, provided, however, without limitation, that the provisions of this Agreement relating to choice of law found at Section 31 of the State's Standard Contract Terms and Conditions, the remedy for copyright infringement found at Section 25 of the State's Standard Contract Terms and Conditions and the Exclusive Remedies and Limitation of Liability at Section 7 herein shall apply in all cases and supersede any provisions contained in Contractor's software licensing agreement or any other agreement.

F. State's license includes the right to updates, upgrades, or other enhancements. The Contractor reserves the right to an additional license fee for such update, upgrades, or other enhancements.

G. Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Contractor or subsequently upgraded by Contractor.

H. State's license infers no title or ownership in the Software and no rights in any associated source code, unless otherwise agreed to in writing by the parties, and will not be construed as a sale of any ownership rights in Software, unless such Software is being developed or modified exclusively as a Special Product in response to the State's bidding documents.

I. State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

4. USE OF SOFTWARE AND INFORMATION.

A. State agrees that any Software or technical and business information ("Information") owned by Contractor or its suppliers and furnished to State under this Agreement shall remain the property of Contractor or the supplier.

B. All Software and information furnished to State under this Agreement:

(1) shall be used by State only to install, operate or maintain the Product for which they were originally furnished;

(2) shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this Agreement; and

(3) shall, together with any copies except one (1) copy for archival purposes containing State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

C. All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except for any part that:

(1) is rightfully obtained by State free of any obligation to keep in confidence;

(2) becomes generally known to the public through acts not attributable to State;

(3) is independently developed by State, or

(4) is subject to disclosure in accordance with the provisions of the Idaho Public Records Act.

D.

(1) Within the United States, a Software or program license may be transferred to another location within the State's organization upon written notice to Contractor without additional costs. All other transfers, including a Software or program license outside the United States, shall be permitted only with Contractor's prior written consent which consent shall not be unreasonably withheld and shall be subject to Contractor's standard transfer fee in effect at the time of the transfer.

(2) The rights granted herein are restricted for use solely by State. State may not authorize or allow the use or marketing of the Software/Programs by a third party, and may not assign or transfer the Software or programs to a third party, without the prior written consent of Contractor. The new end user must agree in writing to Contractor's terms and conditions respecting ownership, use and confidentiality of Software and information and to payment of any scheduled fees.

E. Special Products, if sought in the State's bidding documents, are being developed or modified exclusively for the State, and such Special Products, all related Data, all copyrights in Special Products and derivative works belongs exclusively to the State and are hereby transferred to the State.

5. WARRANTIES.

A. Product warranties shall include the following at a minimum:

(1) On the delivery date the Products and the associated computer operating system Software (basic Software acquired with the equipment that enables equipment to function) will be in good working order and in accordance with Contractor's standard specifications. Unless otherwise specified in the State's bidding documents, the warranty for other suppliers' Commercial Computer Software is included in the supplier's software package and is provided directly from the supplier.

(2) The warranty period shall be as specified in the State's bidding documents and shall begin on the day following successful installation. If no warranty period is specified, the warranty period shall be Contractor's standard warranty period for the Products ordered, commencing the day following successful installation.

(3) State shall notify Contractor if any Product is not in good working order during the warranty period. Contractor will, at its option, either repair or replace any Product not in good working order without charge to State. Repair or replacement Products will be new or equivalent to new in performance and fully warranted the same as new. All returned Products will become the property of Contractor at the time the Product is picked up by Contractor or placed in shipment to Contractor.

(4) The service provided during the warranty period is dependent upon the applicable warranty option selected by State and indicated in the State's bidding documents. If no warranty option is indicated, Contractor will provide the warranty service that is Contractor's standard for such Product, unless otherwise agreed to by the parties.

(5) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates agreed to in such writing.

B. Software warranties shall include the following at a minimum:

(1) Contractor warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date unless otherwise agreed to in writing by the parties. Contractor will replace without charge any Contractor supplied tapes, diskettes

or other media that is not in good working order, during the warranty period, if returned to Contractor. If Contractor is unable to replace the Software, Contractor will refund the full amount paid for the use of the Contractor Software.

(2) In addition to the warranty exclusions stated in Section 6, Contractor does not warrant that the operation of Products acquired under this Agreement will be uninterrupted or error free, or that the Software functions will meet State's requirements unless a Special Product Software. Although Contractor has used reasonable efforts to minimize defects or errors in the Software, State assumes the risk of any damage or loss from the use of or inability to use the Software.

(3) For any Special Product Software provided pursuant to this Agreement, Contractor warrants that for a period of one (1) year after the State accepts the Special Product Software, the Special Product Software will operate and perform error free as the Special Product Software solution for the named State Agency, and in accordance with the functions and specifications as set forth in the Agreement. This express warranty applies only if the State specifically identifies in its specifications the Hardware on which the Special Product Software will be used or if the Special Product Software is used in connection with Hardware acquired in connection with this Agreement.

C. Contractor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date Support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after delivery and Contractor's successful installation, Contractor or its suppliers will provide telephone assistance to State during State's normal business hours unless otherwise agreed to in writing by the parties.

6. WARRANTY EXCLUSIONS.

A. EXCEPT AS STATED IN SECTION 5, CONTRACTOR, ITS PARENT, SUBSIDIARIES AND THEIR AFFILIATES, SUB-CONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. The warranty provided in Section 5 does not cover repair for damages, malfunctions or service failures caused by:

(1) actions of non-Contractor personnel;

(2) failure to follow Contractor's installation, operation or maintenance instructions previously provided to State;

(3) attachment to the Products of non-Contractor products or failure of products not maintained by Contractor unless such installation or use is approved in writing by the Contractor; or

(4) Force Majeure conditions set forth in Section 30 of the State's Standard Contract Terms and Conditions.

7. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY.

A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7, "CONTRACTOR" SHALL BE DEEMED TO INCLUDE THE CONTRACTOR AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, AND SUPPLIERS AND "DAMAGES" SHALL BE DEEMED TO REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS, LIABILITY, EXPENSE OR COST INCURRED.

B. CONTRACTOR'S ENTIRE LIABILITY AND STATE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY WORK, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

(1) FOR INFRINGEMENT, THE REMEDIES SET FORTH IN SECTION 25 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS.

(2) FOR FAILURE OF PURCHASED OR LEASED PRODUCTS, THE REMEDIES STATED IN SECTION 5 HEREIN AND SECTION 24 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS [YEAR 2000]. IF CONTRACTOR IS UNABLE, DESPITE REASONABLE EFFORTS, TO REPAIR OR REPLACE, STATE SHALL HAVE THE RIGHT DURING THE WARRANTY PERIOD TO RETURN THE PRODUCTS FOR A REFUND OF THE PURCHASE PRICE.

(3) FOR FAILURE OF SOFTWARE, THE REMEDY STATED IN SECTION 5 HEREIN AND SECTION 24 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS [YEAR 2000].

(4) FOR DELAYS IN THE DELIVERY OR SUCCESSFUL PRODUCT INSTALLATION, WHICHEVER IS APPLICABLE, CONTRACTOR SHALL HAVE NO LIABILITY UNLESS THE DELIVERY OR SUCCESSFUL INSTALLATION DATE IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSES NOT ATTRIBUTABLE EITHER TO STATE OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE STATE SHALL HAVE THE RIGHT, AS ITS REMEDIES:

(a) TO RECOVER DIRECT COSTS INCLUDING REPLACEMENT PRODUCTS, IF ANY, ATTRIBUTABLE TO CONTRACTOR'S DELAY, SPECIFICALLY EXCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES; AND

(b) TO CANCEL THE ORDER WITHOUT INCURRING CANCELLATION CHARGES.

(5) FOR PROVEN DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY, EXCLUDING THE STATE'S OTHER SOFTWARE, DATA, AND DATA FILES, OR FOR BODILY INJURY OR DEATH TO ANY PERSON NEGLIGENTLY CAUSED BY CONTRACTOR.

(6) FOR CLAIMS OTHER THAN SET FORTH IN 7.B(1) THROUGH 7.B(5), CONTRACTOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES, NOT TO EXCEED TWO (2) TIMES THE AGREEMENT VALUE OR

ONE (1) MILLION DOLLARS (\$1,000,000.00), WHICHEVER IS GREATER.

C. EXCEPT TO THE EXTENT PROVIDED IN SUBSECTION 7.B(5) ABOVE, CONTRACTOR SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. SUPPORT.

A. Except as specifically provided, an order for Support will constitute State's acceptance of the terms of the exhibit for that Support in effect on the date of order. The terms and conditions of a standard support services program agreement (for example, a gold, silver or bronze or similar program) applicable to Products and acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and a standard agreement, the terms or conditions of this Agreement shall take priority and control, provided, however, and without limitation, that the provisions of this Agreement relating to choice of law found at Section 31 of the State's Standard Contract Terms and Conditions, and the Exclusive Remedies and Limitation of Liability at Section 7 herein shall apply in all cases and supersede any provisions contained in a standard services agreement or any other agreement.

B. To be eligible for Support, Products must be in good operating condition and at current specified revision levels. Contractor will charge Contractor's standard rates in effect on the date of the Support order to bring non-eligible Products up to these requirements.

C. Contractor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.

D. Relocation of Products is State's responsibility and may result in additional Support charges and modified service response times. Products moved to another county may continue to be serviced subject to availability of a Contractor authorized Support provider.

E. Contractor is not required to provide Support for nonqualified products. "Nonqualified products" are hardware and Software not supplied or approved by Contractor, and Products for which the State does not allow Contractor to incorporate modifications. The State is responsible for removing nonqualified products to allow Contractor to perform Support services.

F. Support does not cover any damage or failure caused by:

(1) media and supplies or use of items not designated for use with Products; or

(2) site conditions that do not conform to Contractor's previously established site specifications; or

(3) neglect, improper use, fire or water damage, electrical disturbances, transportation by State, work or modification by people other than Contractor's employees, subcontractors, or other authorized parties.

G. The State is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the Products to reconstruct lost or altered files, data or programs. State must have a representative present when Contractor provides Support services. State must notify Contractor if Products are being used in an environment that poses a potential health hazard to Contractor's employees or subcontractors.

24.5 Special T&Cs for Janitorial Contracts

INSURANCE:

A. For the duration of the Contract and until all work specified in the Contract is completed, the Contractor shall maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. IF REQUESTED BY THE STATE, within two (2) weeks after request, the Contractor will provide certificate(s) of the insurance for the coverage required by the State as specified below. There will not be provisions for exceptions to this requirement. FAILURE to provide the certificates of insurance within the two (2) week period may, at the State's discretion, result in cancellation of the Contract. Evidence of such insurance shall consist of a completed copy of the certificate of insurance signed by the insurance agent for the Contractor and returned to the State. If for any reason, any material change occurs in the coverage during the course of this Contract, such change will not become effective until 30 days after the State has received written notice of such change. The amount of such insurance shall be not less than:

(1) Worker's Compensation Insurance in amounts as required by statute.

(2) Automobile Liability including non-owned and hired \$500,000.00

(3) Commercial General Liability or Comprehensive General Liability Insurance including Contractual Liability \$500,000.00

B. The certificate must contain a provision that, should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the State, by certified or registered mail, receipt requested.

QUALITY CONTROL MEETINGS: The parties to this contract agree to schedule and participate in quality control meetings on an "as needed basis," but not less than quarterly during the term of this contract.

The purpose of such meetings shall be to provide feedback to the Contractor on the performance of the contract and to provide the State agency with the opportunity to discuss any problem areas that may arise.

Any complaints not resolved after the second meeting should be reported to the Administrator, Division of Purchasing for follow-up.

EXAMINATION OF SITE: Before submitting a bid to the State, bidders are urged to visit the site where the services are to be performed and fully inform themselves of all the conditions and limitations. Failure to do so will in no way relieve the successful Contractor of the responsibility in furnishing sufficient materials, equipment and/or personnel to perform all duties described in the specifications without additional cost to the State.

WORK INSPECTION: The site where the services are to be performed is to be personally inspected by a supervisor of the Contractor each and every month and a signed statement either

attached or written on each monthly statement that the scheduled duties have been completed as specified and that the appearance of the work site meets the State's standards. Any differences between the Contractor's standards and the State's will be discussed further.

CONTRACTOR QUALIFICATIONS: The State expects the work to be done by thoroughly trained and competent people. The bidder must be able to furnish evidence of successful jobs of comparable size, if requested by the State. The Contractor shall have sufficient equipment and personnel to fulfill the terms of this contract. Excuses of non-operating equipment and personnel on vacation, etc. as causes for poor workmanship will not relieve the Contractor of his obligation to perform the contract and may be cause for termination.

EMPLOYEE EXPERIENCE: Contractor shall provide employees experienced in and qualified to perform specified tasks. The contractor and the State will jointly agree upon those employees who are to perform services under this agreement. The State shall be the sole judge of employee performance. If, for any reason, the State deems any contract employee's performance unsatisfactory, the contractor shall upon written or verbal request by the State, immediately remove such employee. The contractor shall replace such employee within twenty four (24) hours of notification unless a different time frame is agreed upon. Failure to provide experienced and qualified employees acceptable to the State will be cause for immediate termination of the contract.

24.6 Special T&Cs for Lease/Time Purchase Contracts

LEASE INVOICES AND PAYMENTS: The State's obligation to make periodic payments for the lease of equipment shall begin upon delivery of goods which conform to the requirements of the Lease contract. Contractor agrees to bill the State on the 15th day of the month immediately prior to the month for which payment is requested or on a pro-rated basis from the date of installation to the first day of the following month if installation is not on the first working day of the month. Invoices are to be based upon monthly billing in arrears, unless otherwise agreed to by the parties. Payment for each lease period shall be dispatched by the State no later than the 1st day of the month for the period for which payment is requested. Contractor is specifically aware that the use of the equipment will be by an agency of the State of Idaho. Contractor is further aware that such use is to be funded by appropriations from the Legislature of the State of Idaho, and may be funded in part by the government of the United States of America. Contractor is further aware that payment pursuant to the terms of this Lease shall be by government voucher. Contractor specifically agrees that late payment by the State of Idaho shall not constitute grounds for Default. Any payments received later than thirty (30) calendar days from the due date may be subject to a late charge of five percent (5%) of the amount of the payment which remains due for more than thirty (30) calendar days. State agrees to tender payment for the twelfth month of the Lease period simultaneously with tender of the first month's payment, if requested.

OWNERSHIP: It is expressly understood and agreed that this is a contract of leasing only and that the State by these presents acquires no right, title, or interest in or to the equipment described in the Lease, except those of a user.

INSURANCE: The State maintains a program of self insurance; and the equipment will be insured to the same extent as other property of the State. All Public Liability coverage for the State individually shall be secured by State. Upon written request State shall furnish Contractor satisfactory evidence of such insurance coverage or self-insurance, which evidence shall among other things provide that Contractor receive immediate notice of policy cancellation. All such insurance or self-insurance shall protect, as their interests may appear, the Contractor, the State, any other person having an interest in the Equipment, and any person responsible for the use or operation of the Equipment.

DAMAGE TO LEASED EQUIPMENT: The State shall be responsible for damage to, or loss of, Contractor's leased equipment caused by the negligence of the State, its employees, officers, or agents while the equipment is in the possession and control of the State. Contractor shall be responsible for damage to, or loss of, the equipment caused by the negligence of the Contractor or of the manufacturer and from all other sources.

NOTICE OF INTENT TO CANCEL FOR DEFAULT: Contractor or State shall give thirty (30) days written notice to the other, of any intent to cancel this Lease upon grounds of Default. Within that time period, the appropriate party shall have the absolute and uncontrolled right to cure. Written notice shall be dispatched by Lessor to the Administrator of the Division of Purchasing; if by Lessee to Lessor, at the respective mailing addresses. Cancellation of this Lease shall be ineffective if attempted in any other manner.

24.7 Special T&Cs for Vehicle Leases

The State of Idaho, by and through its statutory agent, the Administrator, Division of Purchasing on behalf of the Requisitioning Agency, hereinafter referred to as "Lessee", enters into this Vehicle Lease Agreement hereinafter referred to as "Lease," with the vendor hereinafter referred to as "Lessor" whose name and address are noted in Exhibit E, said exhibit (and all other exhibits hereinafter referenced) attached hereto and incorporated in full, for the lease of a motor vehicle(s), the respective vehicle identification number(s) being set forth in Exhibit A. In addition to the following terms, Lessor agrees that said motor vehicle(s) shall be delivered to Lessee at Lessee's place of business, on or before the date specified in Exhibit C. Further, that said motor vehicle(s) shall be delivered in good condition completely serviced for immediate use by Lessee, free from defect, and in all respects prepared for the use for which the motor vehicle(s) is intended. Further, said motor vehicle(s) shall minimally comply in all respects with the motor vehicle specifications required for a vehicle of its type as set forth in Exhibit B and/or as submitted in Lessee's bidding documents.

1. DURATION OF LEASE-OPTION TO RENEW: Lessor agrees to lease said motor vehicle(s) to Lessee for a period of time as set forth in Exhibit C, hereinafter referred to as "Lease Term." Lessee shall exercise its option to renew for annual periods, if at all and provided for in the bidding documents, by serving written notice upon Lessor of its intent to later than thirty (30) days prior to conclusion of a Lease Term. Pricing for any renewal period shall not exceed the amount for the most recent annual period of the Lease Term or as provided for in the bidding documents. Written notice shall be deemed to be received by Lessor upon dispatch of same by the Administrator, Division of Purchasing, in the postal system of the United States.

2. COST OF LEASING: Lessor agrees to lease said motor vehicle(s) to Lessee upon an individual motor vehicle basis, the respective periodic sums of which are set out in Exhibit C.

3. PAYMENT SCHEDULE: Lessee's obligation to make periodic payments for the lease of said motor vehicle(s) shall begin upon delivery of the vehicle(s) to Lessee. Lessor agrees to bill Lessee on the 15th day of the month, immediately prior to the period for which payment is requested. Payment for each Lease period shall be dispatched by Lessee on the 1st day of the following the period for which Payment is requested. Lessor is specifically aware that the use of said leased vehicle(s) will be by the Requisitioning Agency listed in Exhibit E, an agency of the State of Idaho. Lessor is further aware that payment pursuant to the terms of this Lease shall be by government voucher. Lessor specifically agrees that late payment by the State of Idaho shall not constitute grounds for Default. Any payments received later than thirty (30) calendar days from the due date may be subject to a late charge of five percent (5%) of the amount of the payment which

remains due for more than thirty (30) calendar days. Lessee agrees to tender payment for the twelfth month of the Lease period to Lessor simultaneously with tender of the first month's payment, if requested.

4. EXCESS MILEAGE: Lessor shall grant Lessee a maximum mileage allowance in an amount listed in Exhibit C per vehicle in excess of mileage registered upon delivery. Excess mileage shall be paid by Lessee at the rate per mile, per vehicle, listed in Exhibit C. In the event of early termination the number of miles allowed will be determined by prorating the mileage allowed for the full term by the number of months the Lease was in effect.

FOR AND IN CONSIDERATION OF THE LEASE PAYMENT, Lessor and Lessee further agree:

(a) That Lessee shall maintain the leased motor vehicle(s) in as good condition as when received, ordinary wear and tear or defect excepted. The Lessee further agrees that it shall be responsible for all non-excepted needed labor and repairs, including the continuous operation of the speedometer.

(b) That Lessee's obligation pursuant to Paragraph (a) is superseded by and to the extent of the manufacturer's warranty, set forth as Exhibit D. Should repair by Lessor of warranty items extend in time beyond 72 hours, Lessor agrees to provide a replacement vehicle to Lessee at no additional charge until the leased vehicle is repaired and returned to Lessee.

(c) That for warranty purposes, Lessee shall report to the Lessor any abnormalities of operation or defects, as well as all accidents involving the vehicle(s), within 120 hours after the same come to his attention and agrees to permit the Lessor to inspect the vehicle(s) at all reasonable times.

(d) That the Lessee agrees to maintain in force and to pay the premiums thereon for a policy of insurance covering comprehensive fire, theft and collision coverages with total loss payable to Lessor. All Public Liability coverage for the Lessee Individually (with limits of \$100,000/ \$300,000 bodily injury and \$100,000 property damage) shall be secured by Lessee. Lessee shall furnish Lessor satisfactory evidence of such insurance coverage, which evidence shall, among other things, provide that Lessor receive immediate notice of policy cancellation. All such insurance shall protect, as their interests may appear, the Lessor, the Lessee, any other person having an interest in the vehicle(s), and any person responsible for the use or operation of the vehicle(s).

(e) That the title of the vehicle(s) at all times shall remain in the Lessor's name. Lessee shall pay for licensing thereof for operation within state laws. Lessee shall keep the vehicle(s) free from any and all liens for claims and shall do or permit no act or thing whereby Lessor's title may be encumbered or impaired.

(f) That neither this Lease, nor the Lessor's rights hereunder, shall be assignable or in any other manner transferable by Lessor to any other party, without the approval in writing of the Administrator of the Division of Purchasing, and any such agreement or transfer without such approval shall cause the annulment of the agreement so assigned or transferred, at the option of the State of Idaho.

(g) That neither this Lease, nor the Lessee's rights hereunder, shall be assignable by Lessee without Lessor's written consent.

(h) That the Lessee will hold Lessor harmless for any liability arising out of the negligent use or operation of the vehicle(s) by Lessee.

(i) That the Lessee shall be responsible for any damage to the vehicle(s) caused by Lessee's negligence or misuse of same.

(j) That Lessee shall return the vehicle(s) to the Lessor's place of business upon expiration of the Lease.

5. NOTICE OF INTENT TO CANCEL FOR DEFAULT: Lessor or Lessee shall give thirty (30) days written notice to the other, of any intent to cancel this Lease upon grounds of Default. Within that time period, the appropriate party shall have the absolute and uncontrolled right to cure. Written notice shall be dispatched by Lessor to the Administrator of the Division of Purchasing; if by Lessee to Lessor, at the respective mailing addresses heretofore stated in Exhibit E. Cancellation of this Lease shall be ineffective if attempted in any other manner.

6. OFFICIALS, AGENTS AND EMPLOYEES OF LESSEE NOT PERSONALLY

LIABLE: It is agreed by and between the parties hereto that in no event shall any official, agent or employee of the State of Idaho be, in any way, personally liable or responsible for any covenant or agreement herein contained whether express or implied, nor for any statement, representation, or warranty made herein or in any way connected with this Lease.

7. APPROPRIATION BY LEGISLATURE REQUIRED: It is understood and agreed that Lessee is a government entity and this Lease shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature or the Congress of the United States as may exist from time to time. In the event the Idaho Legislature or United States Congress fails, neglects or refuses to appropriate such funds as may be designated and enables the Requisitioning Agency to continue the Lease payment, this Lease shall be at such time automatically terminated and at an end, and all future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after written notice to the Lessor. It is understood and agreed that the Lease Payments herein provided for shall be paid from the joint appropriation of the State of Idaho, Requisitioning Agency as listed in Exhibit E.

8. GENERAL PROVISION:

(a) Neither party shall be liable or deemed to be in default for any Force Majeure delay or failure in performance under this Lease or interruption of service resulting from Acts of God, civil or military authority, acts of war, riots, insurrections, labor disputes, or unusual delays beyond the Vendor's control.

(b) This Lease shall be construed in accordance with, and governed by the laws of the State of Idaho.

(c) This Lease, with the State's Invitation To Bid or Request for Proposal, the Vendor's bid response to the extent it is not in conflict with the bid specifications and Exhibits A through E inclusive, constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiation, representations, commitments, and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Lease shall prevail notwithstanding any variances with the terms and conditions of any order submitted by the State of Idaho.

EXHIBIT "A"

Vehicle Lease: **Year Make Model Vehicle Identification Number**

To be provided at time of delivery

EXHIBIT "B"

Specifications: Specifications, if not attached or otherwise described, are those stated in the bidding documents and are incorporated by reference as though herein set out in full.

EXHIBIT "C"

Delivery Date: On or Before _____

Lease Term: _____ years

Lease Costs: Monthly @ \$_____ per month per vehicle - Excess Mileage Charge: \$ 0._____ per mile over _____ miles per year

Annual Pre-Payment Credit _____ % of annualized payment

EXHIBIT "D"

Manufacturer Warranty: This document will be provided by the Lessor with each vehicle under this Lease and is made a part of this Lease.

EXHIBIT "E"

Lessor Name and Address: Requisitioning Agency's (Lessee)

Name and Address:

ABC Company Department of ABC

123 Anywhere Street 987 Payment Way

Anytown, US 11100 This Town, US 99987

24.8 Special T&Cs for Statewide Contracts

MINIMUM ORDERS: Bidders are to specify the minimum order acceptable for prepaid shipments. Orders under this amount may be prepaid with the actual freight charges added to the invoice. Where no minimum order exception is noted, it will be taken that no minimum order requirements exist. Excessive minimum order restrictions may result in rejection of your bid.

REPORTS

The Contractor will be required to submit to the Division of Purchasing, quarterly reports that provide the following minimum information:

1 Usage reports by Agency and by Agency receiving location, indicating the types of forms received, total quantity of each type received and the total cost of the order.

2 When possible, reports should be in the same format as the product bidding schedule(s).

3 Custom reports that may be requested from time to time by the Division of Purchasing. Reports will be due to the Division of Purchasing at the end of the first quarter (90 days) of the Contract and each quarterly Anniversary thereafter.

EXCEPTIONS TO USE: Unless this Contract is designated "optional use" or other exceptions to use are listed in the State's bidding documents, State agencies will obtain their requirements from this Contract. The State reserves the right to purchase property elsewhere on an emergency basis where delivery or minimum order requirements (including shipments with prepaid freight charges added) are restrictive or burdensome.

ADMINISTRATIVE FEE: The prices to be paid by the State shall be the prices bid by the Contractor plus one and one-quarter percent (1.25%). The additional percentage shall represent the State's contract usage administrative fee. No more than quarterly, the Contractor shall remit

to the State through its Division of Purchasing, an amount equal to the one and one-quarter percent (1.25%) of the Contractor's net (sales minus credits) quarterly Contract or Agreement sales.

24.9 Special T&Cs for Blanket Purchase Orders/Price Agreements

PURPOSE: The purpose of this Blanket Purchase Order -- Price Agreement ("Agreement") is to establish general terms and conditions for the periodic and repetitive purchase of small items or services as needed by an Agency or Department ("Ordering Agency") of the State of Idaho ("State").

EXTENT OF OBLIGATION: The State is obligated only to the extent of authorized orders actually placed against this Agreement by the Ordering Agency.

PRICING: The prices to the State, in addition to any discounts for prompt payment, shall be as low as, or lower than those charged the Contractor's other customers, given similar quantities and business considerations.

ORDER LIMITATION: No individual order under this Agreement shall exceed \$5,000.00 and no individual line item shall exceed \$1,500.00. Violations of this provision will be cause for immediate termination of the Agreement.

INDIVIDUALS AUTHORIZED TO PLACE ORDERS: The State will furnish from time to time, written notice of individuals authorized to place orders and any applicable dollar limitation per order under this Agreement. The Contractor is NOT AUTHORIZED to accept orders from any individual not listed on the authorized list.

SAVE HARMLESS: Contractor shall protect, indemnify, and save the State harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of Contractor, his employees, or subcontractors, howsoever caused.

DELIVERY TICKETS: All shipments under this Agreement shall be accompanied by one (1) Delivery Ticket or one (1) Sales Slip which shall contain the following minimum information:

- Name of Contractor (Supplier)
- Blanket Purchase Order (Example BPO 24)
- Date of Order
- Order Number (Example 001,002,etc.)
- Itemized List of Supplies or Services Furnished
- Quantity, Unit Price, and Extension of Each Item Less Applicable Discounts
- Date of Delivery or Shipment

INVOICING: A monthly summary invoice in original and two copies shall be submitted to the Ordering Agency for all orders made during the month, identifying the delivery tickets covered therein, stating their dollar value and supported by one receipted copy of each delivery ticket.

ALL INVOICES are to be sent directly to the ORDERING AGENCY ONLY. Blanket Purchase Order (BPO) numbers are to be shown on all invoices. **In no case** are invoices to be sent to the Division of Purchasing.

GOVERNING LAW: This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho and in particular, the Idaho Uniform Commercial Code.

INSPECTION AND DELIVERY ARRANGEMENTS: All supplies for which authorized orders are placed hereunder shall be delivered by Contractor F.O.B. Destination, freight prepaid and

allowed, unless otherwise stated or arrangements have been made to pick up supplies at Contractor's location. Inspection of supplies will be made by the State prior to acceptance of the supplies.

TERMINATION: Unless otherwise stated elsewhere in this Agreement, termination of the Agreement may be made fifteen (15) days after receipt of verbal or written notice from the State.

24.10 Miscellaneous T&Cs

CONFIDENTIAL INFORMATION. Pursuant to this Agreement, Vendor may collect, or the State may disclose to Vendor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Vendor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Vendor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or information that:

- a. is or was in the possession of Vendor before being furnished by the State, provided that such information or other data is not known by Vendor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b. becomes generally available to the public other than as a result of disclosure by Vendor; or c. becomes available to Vendor on a non-confidential basis from a source other than the State, provided that such source is not known by Vendor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

TRANSITION REQUIREMENTS: At the expiration of the contract, if contract transition is required, the current Contractor shall exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor. The Contractor shall, upon written notification from the Contract Administrator, provide phase-in, phase-out services for up to 120 working days and negotiate in good faith with the Contract Administrator and the contract successor, a plan to determine the nature and extent of phase-in, phase-out services required. The Contractor shall provide to the Contract Administrator for approval, a detailed transition plan. The Contractor shall provide sufficient, experienced personnel during the transition period to ensure that the services called for in the contract are maintained at the required level of proficiency.

DISCOUNTS: The bidder may, at its option, quote a **negative** mark-up to the applicable price list.. A negative mark-up has the net effect of being a discount **from** the price list.

ACCESS TO RECORDS: During the bid evaluation the State reserves the right to request from the bidder access to and/or a copy of the Microsoft Channel Pricing for pricing verification. Failure to provide the requested price list within three (3) business days following the State's request may result in disqualification of the bidder's proposal.

PRICE LIST ACCESS: At any time during the Contract and for a three (3) year period following the end of the Contract, the State reserves the right to request from the Contractor access to and/or a copy of the applicable price list used for the Contract's pricing basis for Contract pricing verification. Failure to provide the requested price list within three (3) business days following the State's request may result in Contract termination.

RECORDS MAINTENANCE: The Contractor shall maintain or supervise the maintenance of all records necessary to properly account for all payments made to the Contractor for the costs authorized by this Contract. These records shall be retained by the Contractor for at least three (3) years after the Contract terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.

AUDIT RIGHTS: The Contractor agrees to allow State and Federal auditors and State agency staff access to all the records relating to this Contract, for audit, inspection, and monitoring of services or performance. Such access will be during normal business hours or by appointment.

NEW CURRENT PRODUCTION (Photocopiers): If called for in the specifications, new current production shall mean: (1) produced by the manufacturer within the last six (6) months prior to the "Invitation to Bid" opening; and two (2) has not formally been discontinued; and three (3) service and parts must be available for the length of time as contained in the "Invitation and Bid," where applicable.